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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,999	10/30/2003	Richard S. Sanders	279.611US1	7426
21186	7590	07/10/2008	EXAMINER	
SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402				THOMAS, JONATHAN B
ART UNIT		PAPER NUMBER		
3766				
		MAIL DATE		DELIVERY MODE
		07/10/2008		PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/697,999	SANDERS, RICHARD S.	
	<b>Examiner</b>	<b>Art Unit</b>	
	JONATHAN B. THOMAS	3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 April 2008.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-19 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Response to Arguments***

Applicant's arguments filed 4/15/2008 have been fully considered but they are not persuasive. In response to applicant's argument that the cited prior art disclosures do not demonstrate awareness of the problem solved by the applicant, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). In response to the applicant's argument that not all of the claimed elements are shown in the prior art, please review the examiner's position as mailed 1/15/2008 and reproduced, for convenience, below.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 16, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindberg 5,370,666 in view of Von Arx et al. 6,985,773 and Goedeke 6,263,246.

Lindberg teaches an electrogram signal sensing channel 6, one or more pacing channels C1 and 15, programmable tachyarrhythmia detection controller 4, telemetry interface 12, magnetic switch 14, and activity level sensor 6.

Lindberg does not teach the following claimed limitations taught by Von Arx: disablement of a component (Col. 3 II. 56 - Col. 4 II. 9) and re-enablement of a component (Col. 3 II. 12-55), disablement time interval specification via the telemetry interface (Col. 3 II. 12-17), magnetic switch component actuation (Col. 3 II. 32-38), and activity level component actuation (Col. 3 II. 47-54).

It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the invention of Lindberg in view of Von Arx in order to conserve energy (Col. 4 II. 10-21).

Goedeke teaches the following claimed limitations not taught by Lindberg or Von Arx: disabling device therapy (Col. 4 II. 49 - Col. 5 II. 4). It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the invention of Lindberg and Von Arx in view of Goedeke in order to assist sleep (Col. 4 II. 49 - Col. 5 II. 4).

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindberg in view of Von Arx and Goedeke and further in view of Hauser 5,385,574.

Lindberg, Von Arx and Goedeke teach the device as disclosed above, however it does not teach the following claimed limitations disclosed by Hauser: defibrillation and pacing channels 80 and 82. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Lindberg and Von Arx device in view of

Hauser to reduce the number of devices implanted in the patient.

Claims 14, 15, 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindberg in view of Von Arx and Goedeke as applied to claims 1,16, and 18 above, and further in view of McDonald 4,236,522.

Lindberg, Von Arx and Goedeke teach the apparatus as described above however it does not teach the following claimed limitation taught by McDonald: therapy disablement by disablement of one or more sensing channels (Col. 3 ll. 25-28). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Lindberg and Von Arx in view of McDonald to switch a demand mode pacer to an asynchronous mode pacer.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN B. THOMAS whose telephone number is (571)270-3082. The examiner can normally be reached on Mon-Fri 9:30-9 EST. Alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Layno can be reached on 5712724949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Carl H. Layno/  
Supervisory Patent Examiner, Art Unit 3766

7/7/2008  
JBT